

SERVED: September 17, 1998

NTSB Order No. EA-4702

UNITED STATES OF AMERICA  
**NATIONAL TRANSPORTATION SAFETY BOARD**  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 11th day of September, 1998

_____	)	
JANE F. GARVEY, Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket No. SE-14525
	)	
JIM W. SCHNEIDER,	)	
	)	
Respondent.	)	
_____	)	

**ORDER DENYING RECONSIDERATION**

The Administrator has requested reconsideration of our opinion in NTSB Order No. EA-4653, issued on April 30, 1998. In that decision, we found that respondent's reliance on what he reasonably believed was an updated official weather report that had been relayed to him by a company station agent, did not support a violation of FAR § 121.651 when respondent took off when the official reported weather was still below IFR [instrument flight rules] minimums.

We have reviewed the Administrator's complaints carefully, and none warrant reconsideration of our decision. The Administrator asserts that we have failed to defer to her interpretation of the regulation, claiming that the Board does not understand that officially reported weather is the controlling standard set out in section 121.651(a). Administrator's Brief in Support of Petition at page 7.<sup>1</sup> The Administrator's concerns are based on an erroneous reading of our decision. We did not say that anything other than an official weather report could be relied on by respondent. We agree that

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<sup>1</sup>Respondent has filed a brief in reply, urging the Board to deny reconsideration.

under § 121.651 a pilot cannot substitute his or another person's own observations for the officially reported weather. And, we certainly did not say that respondent could rely on a weather report of his own choosing.

While recognizing that there are cases where an airman could reasonably rely on another to relay an official weather report, see brief at page 17, note 2, the Administrator asserts that respondent could not rely on what the company station agent told respondent here, because the station agent did not have the authority and responsibility to disseminate an official weather report to respondent verbally -- the Administrator refers to the verbal nature of the transmission no less than three times in her brief. Our decision focused, however, not on whether the station agent could have or should have read respondent an official weather report, but whether respondent could reasonably believe that a weather report read to him by a station agent was actually official. And, we found, since the station agent could physically hand respondent a dispatch package that contained an official weather report, and since he could have printed out an updated official weather report from the computer at the gate and then hand it to respondent before he boarded the aircraft, there was no reason why respondent should have believed that a weather report that was read to him over the radio by the company station agent was anything other than an official weather report, absent some evidence to suggest otherwise.<sup>2</sup> In other words, the Administrator disagrees with our factual conclusions, which is not a valid basis for reconsideration.

**ACCORDINGLY, IT IS ORDERED THAT:**

The Administrator's petition for reconsideration is denied.

HALL, Chairman, HAMMERSCHMIDT, GOGLIA and BLACK, Members of the Board, concurred in the above order. FRANCIS, Vice Chairman, did not concur.

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<sup>2</sup>Moreover, the Administrator's assertion that our decision ignores the law judge's credibility findings is unavailing. The evidence shows that respondent actually observed weather that was consistent with the verbal report, and that the station agent claimed that he told respondent he would obtain the information from an official source, and that the station agent testified that his verbal report used "official" terminology -- i.e., he reported to respondent that there was now a 500-foot ceiling, not that the weather was "looking good," or words to that effect. Therefore, our determination that respondent's reliance was reasonable was based on our finding that respondent subjectively believed that the station agent's report could be relied on, notwithstanding the law judge's credibility determination against the station agent.